IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4682 of 1999

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHURABHAI NATHABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 25/04/2006

ORAL JUDGMENT

1.By this petition under Article 226 and 227 of the Constitution of India, the petitioner challenges the order dated 26th May, 1999 (Annexure “D” to the

petition) passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, in the exercise of powers under Section 211 of the Bombay Land Revenue Code, 1879 (the Code), and consequently, seeks restoration of the order dated 23rd September, 1996 (Annexure "A" to the petition)of the Taluka Development Officer, Padhadhari permitting non-agricultural use of the land bearing Survey No.37 part of Village Nana Vada, Taluka Padadhari.

2. The petitioner was the original owner of land bearing survey No.40 part, admeasuring Acre 2 – 21 Gunthas, (equivalent to 10,218 sq. mtrs.), situated in the sim of Village Nanavada, Taluka Padadhari, Dist. Rajkot. The petitioner was desirous of constructing residential houses on the said land. Accordingly, he made an application in the requisite form along with the requisite documents to the Taluka Development Officer, Paddhari, the respondent No.2 herein. By an order dated 23rd September, 1996, the Taluka Development Officer granted the Non-Agriculture (N.A.) permission in respect of the said lands, subject to the conditions set out in the said order. It appears that, subsequently, by an order dated 27/9/96, the additional conditions No.1 to 3 set out in the order dated 23rd September, 1996, were cancelled. It is the say of the petitioner that, after the

N.A. permission was granted, he got his land plotted out into several plots for being sold to persons who were interested in constructing the houses on the said land. The petitioner sold two plots to different persons, namely, Parshottambhai Ghusabhai Patel and Rajeshbhai Ghusabhai Patel by two separate sale deeds, both dated 10/3/1997, which were registered with the office of the Sub Registrar, Rajkot in due course.

3. By a notification dated 16th August, 1997 issued under the provisions of sub-section (1) of Section 4 of the Land Acquisition Act, 1894, lands of Village Nanavada, including the subject lands, were sought to be acquired for the public purpose of Dodi Irrigation Scheme. It appears that the acquisition proceedings culminated into the declaration of award under section 11 of the Land Acquisition Act, and the petitioner was also paid 3/4th of the amount of compensation payable under the award by way of two installments. The first installment was paid on 20th December 1997 and the second installment was paid on 20th March 1998.

4. Thereafter, by a show cause notice dated 23rd November, 1998 issued by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, under the provisions of Section 211 of the Code, the petitioner was called upon to show cause

as to why the order dated 23rd September, 1996 passed by the Taluka Development Officer, Paddhari granting N.A. permission in relation to the subject lands should not be taken in revision and set aside for the reasons stated in the show cause notice.

5. In response to the said notice, the petitioner submitted a detailed reply pointing out that the land in question was already acquired by the State Government for a public purpose; that possession of land was taken over by the Government; that 3/4th of the amount of compensation was paid to the petitioner long back; that the acquisition proceedings had terminated long ago; and the land was already utilized for the purpose for which it was acquired, and therefore, the question of cancellation of N.A. permission did not arise at all. It was submitted that the whole exercise of initiating proceedings for cancellation of N.A. permission was an exercise in futility as the land in question ceased to be governed by the provisions of the Code; that the petitioner was no longer the owner of the land and was not concerned as to what the Government had done in respect of the said land. It was also submitted that the initiation of proceedings for cancellation of N.A. permission was merely a farce, and that the same could not be resorted to after such a long lapse of time, and that, therefore, the notice was required to be

withdrawn and the proceedings were required to be dropped.

6. The Additional Chief Secretary found that the total population of the village was 516; there was sufficient gamtal land; there was no proposal to increase the gamtal, as such the order of the Taluka Development Officer determining the non-agricultural assessment was not reasonable or proper. It was observed that the lands have not been surveyed prior to determining the non-agricultural assessment. The Additional Chief Secretary was of the opinion that it was not proper to give permission to use lands going under submergence for residential purpose. It was further observed that the Land Acquisition Officer had initiated proceedings for acquisition of the said lands by a proposal dated 25/4/1995 and that, the contention that the local Talati-cum-Mantri, Sarpanch and Circle Inspector were not aware of the survey proceedings in that regard was misplaced. The Additional Chief Secretary also found that the Taluka Development Officer has not obtained opinions of the concerned departments / offices prior to fixing the non-agricultural assessment and was of the view that if correspondence had been made to obtain opinions of the concerned departments / offices, or the holder had been asked to obtain no-objection certificate, necessary

clarifications would have been made. It was also found that the opponent No.1 (the petitioner herein) had executed registered deeds in respect of part of plot No.3 after determination of non-agricultural assessment, however, he had accepted the compensation for acquisition in respect of all the non-agricultural plots. That during the period of nine months between the passing of order dated 23/9/1996 making non-agricultural assessment and the issuance of notification under Section 4 of the Land Acquisition Act on 18/6/1997, no non-agricultural activities had been carried out on the said lands and as on today also, it is not possible to carry out non-agricultural activities on the said land. The Additional Chief Secretary was of the view that since investigation in relation to such orders was going on, upholding the orders of the Taluka Development Officer, Paddhari would be futile. Accordingly, by the impugned order dated 26th May 1999, the Additional Chief Secretary cancelled the N.A. permission granted by the order dated 23rd September 1996.

7. Heard Mr.A.J.Patel, the learned advocate appearing on behalf of the petitioners and Mrs.Hansa Punani, the learned Assistant Government Pleader appearing for respondent No.1. Though served, none appears on behalf of the respondent No.2.

8.Learned Advocate for the petitioner Mr.A.J.Patel urged that the very initiation of revisional proceedings was bad and not valid in the eyes of law on the ground of gross delay. It was submitted that the Taluka Development Officer had granted N.A. permission vide order dated 23rd September, 1996. That the said order was sought to be taken in revision after a delay of more than two years by issuance of show cause notice dated 23rd November, 1998. It was submitted that it is settled legal position, as laid down by a catena of decisions of the Apex Court as well as this Court, that revisional powers are to be exercised within a reasonable time. It was submitted that, the exercise of revisional powers beyond the period of two years, could not, in any manner, be said to be within reasonable time. Reliance was placed upon the decision of the Apex Court in the case of State of Gujarat v. Patel Raghav Natha, (1969) 10 GLR 992, for the proposition that, even though section 211 of the Code does not prescribe any period of limitation, such power must be exercised within a reasonable time. The Court was of the opinion that reading sections 211 and 65 of the Code together, the Commissioner (in the present case the State Government) must exercise his revisional powers within a few months of the order of the Collector. Reliance was also placed upon the decision of this Court in the case of Bipinchandra G. Dalal v. State

of Gujarat, 1987(2) GLR 971, wherein this Court had followed the aforesaid decision of the Apex Court and set aside the order passed by the Secretary (Appeals) on the ground that the show cause notices for exercise of powers under Section 211 had been issued after a lapse of one and half years after the permission was granted by the Taluka Development Officer.

9.It was further submitted that initiation of cancellation of N.A. permission was an exercise in futility as the subject lands do not belong to the holder. It was urged that the subject lands have already been acquired and are submerged, hence, proceedings for cancellation of N.A. permission could not have been initiated at all. In conclusion, it was submitted that the impugned order is bad on the count of delay in initiation of revisional proceedings as well as on the ground that the same amounted to an exercise in futility, hence, the same was required to be quashed and set aside.

10.Mrs.Hansa Punani, the learned Assistant Government Pleader supported the impugned order of the Additional Chief Secretary, and reiterated the reasons stated in the said order.

11.Upon perusal of the record of the case, it is

found that notice of the petition had been issued on 2nd July, 1999, and the same was made returnable on 19th July, 1999. On 19th July, 1999, the matter was adjourned to 2nd August, 1999 to enable the respondents to file appearance. Ad-interim stay of operation and implementation of the impugned order at Annexure “D” was granted till then. On 2nd August, 1999, the Court observed that the respondents were absent though served. Rule was issued and it was directed that the ad-interim stay of operation and implementation of the impugned order at Annexure “D” shall continue till further orders.

12.Thus, it is apparent that despite service of notice, the respondents had remained absent, hence, rule was issued on 2nd August, 1999. Thereafter also, the respondents have not filed their appearance and no counter has been filed in response to the averments made in the petition. In the circumstances, the averments made in the petition stand uncontroverted.

13.The undisputed facts of the case, as emerging from the record, are that -

- The order granting N.A. permission was passed on 23rd September, 1996;
- The petitioner sold two plots vide separate sale

deeds dated 10th March, 1997;

- Notification under Section-4 of the Land Acquisition Act was issued on 16th August, 1997;
- The award was declared under the provisions of the Land Acquisition Act and 3/4th amount of the total compensation had been paid to the petitioner by two installments on 20/12/1997 and 20/3/1998 respectively;
- The possession of the lands had been taken over on behalf of the State Government and the same thereafter vested in the State Government free from all encumbrances;
- Thereafter, after a lapse of more than two years since the grant of N.A. permission, a show cause notice dated 23rd November, 1998 was issued for exercise of revisional powers under Section 211 of the Code;
- In response to the notice, the petitioner filed a detailed reply;
- By the impugned order dated 26th May 1999, the Additional Chief Secretary cancelled the N.A. permission granted by the order dated 23rd September, 1996, mainly on the ground that, as the proposal for acquisition of the subject lands had been made on 25/4/1995, the impugned order granting N.A. permission could not have been made.

14.From the facts of the case, it is apparent that the cancellation of N.A. permission would serve no

fruitful purpose as the lands stand vested in the State Government. The idea behind the exercise of revisional powers appears to be that the petitioner has obtained the N.A. permission with a view to get higher amount of compensation in respect of the acquired lands on the basis of the same being non-agricultural lands. However, cancellation of N.A. permission on that count also would be an exercise in futility as the award under the provisions of the Land Acquisition Act has already been made and 3/4th of the compensation has already been paid.

15. Last but not least, the principle contention raised on behalf of the petitioner, regarding delay in the initiation of revisional proceedings merits acceptance. The Apex Court in the case of State of Gujarat v. Patel Raghav Natha (supra) has, in the context of exercise of revisional powers in relation to an order made under Section 65 of the Code, held as follows :

> *"It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.*
>
> *It seems to us that section 65 itself indicates the length of the reasonable time within which the*

Commissioner acts under Section 211. Under section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading sections 211 and 65 together, it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e. more than a year after the order, and it seems to us that tis order was passed too late."

16.The aforesaid decision still holds the field. In the circumstances, applying the ratio of the said decision to the facts of the present case, it is held that the delay of more than two years in the exercise of revisional powers under Section 211 of the Code is bad in law. Moreover, no explanation is coming forth as to what is the purpose behind cancelling the N.A. permission in respect of the

lands vested in the State Government and used for public purpose after the award under the Land Acquisition Act has been made, except to cause undue harassment to the petitioner whose lands have been acquired for the public purpose of an Irrigation Scheme.

17.In the result, the petition succeeds. The impugned order dated 26th May, 1999 passed by the Additional Secretary, Revenue Department (Appeals) (Annexure “D”) is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[HARSHA DEVANI, J.]

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